

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

February 20, 2008

Meeting	Vice Chairperson Wall called this meeting of the Tipp City Board of Zoning Appeals to order at 7:300 p.m.
Roll Call	Roll call showed the following Board Members present: Stacy Wall, John Borchers and David Berrett. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
Absences	Mr. Borchers moved to excuse Mr. Ron Poff , seconded by Mr. Berrett. Motion carried. Ayes: Borchers, Berrett, and Wall. Nays: None.
Oath of Office	<p>Mrs. Patterson, notary administered the Oath Office to new Board Member David Berrett and returning member John Borchers.</p> <p>Citizens attending the meeting: Peter Jackson, Ann Nishwitz, Cynthia Adkins, Robert Nurrenbrock, and Daniel Muthard. (J.R. Powell did not sign the register but was present)</p>
Election of the Chairman and the Vice Chairman	<p>Mr. Berrett moved to hold and abeyance the election of the Chairman and Vice Chairman until a full Board was present, seconded by Mr. Borchers. Motion carried. Ayes: Berrett, Borchers, and Wall. Nays: None.</p> <p>Vice Chairperson Wall stated that at the next meeting, which may be March or when they had an agenda, the Board would hold the elections for Chairman and Vice Chairman.</p>
Appointment of acting Vice Chairperson to conduct meeting	<p>Vice Chairperson Wall stated that because the Board technically did not have a Chairman or Vice Chairman a motion to designate one of the members to direct the meeting. Mr. Berrett moved to have the past Vice Chairperson act as the Chairman Pro-tem tonight until a new Chairman can be appointed at the next meeting, seconded by Mr. Borchers. Motion carried. Ayes: Berrett, Borchers, and Wall. Nays: None.</p>
Board Minutes 11-27-07	<p>Vice Chairperson Wall asked for approval of the November 27, 2007, meeting minutes. Vice Chairperson Wall stated that for the November 27, 2007, meeting minutes she would move to table the vote for approval tonight for the next meeting so that the members who were present here to vote on that motion, seconded by Mr. Borchers. Motion carried. Ayes: Wall, and Borchers. Nays: None. Mr. Berrett abstained from the vote.</p>
Chairman's	Vice Chairperson Wall explained the guidelines and procedures for the

Introduction	meeting and public hearings. He advised the applicants that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicants request, the applicant my file the appropriate permits after the 10-day waiting period has expired.
Citizen Comments	There were no citizen comments on items not on the agenda.
Administration of Oath	Mrs. Patterson, notary, swore in citizens wishing to speak and to Mr. Spring.
New Business	Case No. 13-07: Peter Jackson - 60 Kiser Drive - Inlot: Inlot 1233 - The applicant requested a variance of six (6) feet to Code §154.061(l) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet. Present Zoning District: R-1C – Urban Residential Zoning District Zoning Code Section(s): §154.061(l)
Case No. 13-07: Peter Jackson 60 Kiser Drive Driveway Variance Request	<p>Mr. Spring stated that in conjunction with an expansion of two neighboring driveways, the applicant requested a variance of six (6) feet to Code §154.061(l) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet. Staff noted that the “proposed” expansion had already been completed.</p> <p><u>Case 13-07 remanded back to the BZA for further consideration</u></p> <ul style="list-style-type: none"> On November 28th, 2007, this variance request was denied by the BZA. <ul style="list-style-type: none"> A quorum of four BZA members were present at the meeting Due to the lack of an accurate survey of the “proposed” driveway expansion, it was impossible for staff to depict the exact extent of the required variance in the staff report. The requested variance was denied unanimously (Ayes 4, Nays 0). Upon their denial, Board Member Wall stated that the denial was based in part on her belief that the granting of the variance could be injurious to other property or improvements in the vicinity per Code §154.175(C)(3), citing the possible legal consequences for the applicant and the neighboring property owner caused by the installation of a portion of the driveway on a property that Mr. Jackson did not own. On November 28th, 2007, the applicant (Peter Jackson) submitted an appeal to City Council regarding the denial of a variance by the BZA to Code §154.061(l), which occurred on November 28th, 2007. On January 14th, 2008, a survey of the property was submitted to the City by Brumbaugh Engineering & Surveying, LLC.

- On January 21st, 2008, per Code § 154.204(D)(5), City Council remanded the case back to the BZA for consideration of the new information (survey).

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

History

Mr. Spring stated that on August 8, 2007, Mr. Jackson appeared in person at the Tipp City Government Center, and discussed the possibility of renovation of the existing driveways, approaches and sidewalk at 60 and 66 Kiser drive. The plans he explained were as follows:

- Replacement of sidewalk at 66 Kiser
- Replacement of existing gravel driveway at 60 Kiser with concrete. This replacement would expand the driveway to meet the existing concrete driveway at 66 Kiser.
- Replacement of the approach at 60 Kiser Drive
- Replacement of the approach at 66 Kiser

Mr. Spring stated that he had explained that replacement of the existing gravel driveway with concrete would require a Zoning Compliance Permit (ZCP). He further stated that a variance would be required for any driveway setback closer than 6'. Mr. Spring also stated that unless the property line fell exactly on the demarcation between the driveway at 60 Kiser and 66 Kiser that variances would be needed for both addresses (60 & 66 Kiser Drive) for the required 6' setback.

Mr. Spring noted that Mr. Jackson had said that the driveway at 60 Kiser would end at the property line and that only one variance would be needed. Mr. Spring stated that an accurate survey would be needed to accompany the variance application, which would document the proposed plans. Mr. Jackson was given the variance application material and began to fill it out at the Government office. The application was not completed at the time Mr. Jackson left the office.

Mr. Spring stated that on August 13, 2007, the driveway at 60 Kiser was poured, with the contractor on site (Darrel Cress) about to pour the sidewalk at 66 Kiser and begin to remove the approaches. At 1:30 PM, on the same date, a STOP WORK order provided to Mr. Cress, with notification that no work was to proceed until Mr. Jackson had submitted the appropriate forms and his contractor was registered to work in the right-of-way. At 4:00 PM, on that same date, Mr. Cress submitted appropriate paperwork to complete concrete work in the right-of-way, and the STOP Work order was lifted.

Mr. Spring stated that on August 23, 2007, a correspondence was sent via regular mail to Mr. Jackson notifying him of the violation of Code §154.061(I), with a requirement to apply for a variance to said Code no later than September 4, 2007. The correspondence was mailed to 115 Kiser Drive, Tipp City, Ohio 45371, which is the mailing address listed by the Tipp City Electrical Department for this property. As of September 5, 2007, Mr. Jackson had not submitted the required variance paperwork, as requested.

Mr. Spring stated that on September 10, 2007, the correspondence dated August 23, 2007 was returned to City as "return to sender, not deliverable as addressed, unable to forward." That same date, a second correspondence was sent regular mail to Mr. Jackson notifying him of the violation of Code §154.061(I), with a requirement to apply for a variance to said Code no later than October 1, 2007. This correspondence was mailed to 59 Kiser Drive, Tipp City, Ohio 45371, which was the known address of Ann Nishwitz (friend), and Mr. Jackson's assumed current address of residence. On October 1, 2007, Mr. Jackson had not submitted the required variance paperwork, as requested.

Mr. Spring stated that on October 2, 2007, he held a discussion with a representative at the Tipp City branch of the United States Post Office. After discussion with the route carrier, the representative indicated to him that Mr. Jackson no longer resided at 115 Kiser Drive, but that the carrier knew that Mr. Jackson was residing at 59 Kiser Drive, and that mail addressed to 115 Kiser was usually delivered to 59 Kiser Drive. The carrier could not explain how the correspondence dated August 23, 2007 was returned as "return to sender, not deliverable as addressed, unable to forward." The carrier did indicate that a second correspondence addressed to 115 Kiser Drive, would be delivered to Mr. Jackson at 59 Kiser Drive.

Accordingly, a third correspondence dated October 2, 2007 was sent via regular mail to Mr. Jackson notifying him of the violation of Code §154.061(I), with a requirement to apply for a variance to said Code no later than November 5, 2007. The correspondence was mailed to 115 Kiser Drive, Tipp City, Ohio 45371, per the discussion with the Tipp City Post Office. On November 2, 2007, Mr. Jackson filed the BZA application under discussion this evening.

Mr. Spring noted that in order to provide for appropriate review, staff requested (in each of the three (3) correspondences) that Mr. Jackson provide (along with the application for variance) a site plan indicating the "as-built" condition of the driveway renovation, and the exact location of all property pins on the lot. Staff noted that the Mr. Jackson provided a rudimentary site plan, without a clear delineation of the verified property line on the site plan or the actual site (stakes, flags, pins, etc.).

**Case No. 01-08:
Robert
Nurrenbrock
66 Kiser Drive
Driveway
Variance Request**

As stated above, this variance request was originally denied by the BZA, and subsequently appealed to City Council. On January 21st, City Council remanded the case back to the BZA for consideration of the new information (survey).

On January 14th, 2008, a survey of the property was submitted to the City by Brumbaugh Engineering & Surveying, LLC, which verified that a variance of six (6) feet to Code §154.061(l) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet was, in fact required.

Vice Chairperson Wall stated that Case No. 01-08 was the adjoining property which was involved in Case No. 13-07. Mr. Spring stated that was correct. Vice Chairperson Wall inquired if the facts were the same. Mr. Spring stated that the facts were identical except that it was on the opposite side of the property line. Vice Chairperson Wall noted that the same survey applied to both properties. Mr. Spring stated that was correct. Vice Chairperson Wall stated that if there was no objection from the Board Members she thought it to be appropriate to hear both cases at the same time, since it was the same variance for the driveway. Board Members concurred.

Mr. Berrett asked if the survey submitted actively portrayed where the property line was and if the driveway reflected the property line. Mr. Spring stated that yes that the survey that was completed was an accurate as-built survey of the conditions that currently exist there and also delineated the pre-existing property line.

Vice Chairperson Wall called upon Mr. Jackson.

Mr. Jackson, 59 Kiser Drive approached the dais. Vice Chairperson Wall asked Mr. Jackson if he had any further comments to add in addition to what Mr. Spring had noted. Mr. Jackson stated that the existing driveway would not meet the variance and that was an added factor.

Vice Chairperson Wall called upon Mr. Nurrenbrock.

Mr. Robert Nurrenbrock, 66 Kiser Drive approached the dais. Vice Chairperson Wall stated that one of the issues when the case was originally heard was that Mr. Nurrenbrock was not present so the Board didn't know if he had objected to the events that took place with the driveway or what his thoughts were. Vice Chairperson Wall noted that now he had submitted his own application for a variance so she thought that it was important for the Board to have an understanding of his position.

Mr. Nurrenbrock stated that he was just going to have the sidewalk done because the City was requiring it to be replaced. Mr. Jackson had told him that he had a contractor coming in and that he could

save some money and that Mr. Jackson was going to re-do his driveway and if he cared if he took it up to his driveway. Mr. Nurrenbrock stated that it was not a problem because the old gravel driveway was basically tearing his old cement driveway up anyway. Mr. Nurrenbrock told Mr. Jackson that if he took care of everything than he could go ahead and that he did not have a problem with it. Vice Chairperson Wall asked Mr. Nurrenbrock if the work had been completed. Mr. Nurrenbrock stated yes. Vice Chairperson asked both Mr. Jackson and Mr. Nurrenbrock if they had any objection to the driveways being abutting to each other. Mr. Nurrenbrock said no and that having the driveways the way they are now was more convenient for his wife. His wife has a disease and was easier to get her in and out of the car without the gravel there and less hazardous.

Mr. Berrett inquired if there were any City issues with the driveways. Mr. Spring said no and that the work done in the right-of-way was actually inspected back in August when the work was originally completed, which was completed according to City specifications. Mr. Spring noted that there were no specifications for anything beyond the public right-of-way which would be the driveway itself.

Vice Chairperson Wall asked for further discussion. There being none Mr. Berrett **moved to grant a variance of six (6) feet to Code §154.061(I) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet for Case No. 13-07**, seconded by Mr. Borchers. **Motion carried.** Ayes: Berrett, Borchers, and Wall. Nays: None.

Vice Chairperson Wall asked for a motion for Case No. 1-08. Mr. Berrett **moved to grant a variance of six (6) feet to Code §154.061(I) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet for Case No. 1-08**, seconded by Mr. Borchers. **Motion carried.** Ayes: Berrett, Borchers, and Wall. Nays: None.

Mr. Spring stated that each applicant would be responsible for acquiring the actual Zoning Compliance Permits and submit the \$40 dollar fee within the next week.

**Case No. 02-08:
J.R. Powell for
Cindy Adkins
31 Wilhelm
Two Setback
Variance
Requests**

J.R. Powell, 1 Call Remodeling, Inc. for Paul and Cindy Adkins, owners - 31 Wilhelm Street Tipp City, OH - Inlot: Inlot 952 and adjacent tract to the east 33' x 40' (pt. vacated Second Street Rec. 17- 99) – The applicant requests two variance requests:

Variance 1 - A variance of 19' to the required front yard setback of 30' noted in Code §154.044(C)(2)(a).

Variance 2 - A variance of 27' to the required rear yard setback of 30' noted in Code §154.044(C)(2)(b).

Present Zoning District: R-2 – Urban Residential Zoning District (Ord. 46-07)

Zoning Code Section(s): §154.044(C)(2)(a) &(b)

Mr. Spring stated that the applicant requested two (2) variances in conjunction with a proposed addition to the primary structure located at the single-family residence at 31 Wilhelm Street.

Variance 1

The applicant requested a variance of 19' to the required front yard setback of 30' noted in Code §154.044(C)(2)(a) in conjunction with the construction of an addition to the primary structure located at the single-family residence at 31 Wilhelm Street. If approved, the addition would be 11' from the front property line.

Code §154.044(C)(2)(a) indicates:

Minimum front yard depth: 30 feet.

Variance 2

The applicant requested a variance of 27' to the required rear yard setback of 30' noted in Code §154.044(C)(2)(b) in conjunction with the construction of an addition to the primary structure located at the single-family residence at 31 Wilhelm Street. If approved, the addition would be 3' from the rear property line.

Code §154.044(C)(2)(b) indicates:

Minimum rear yard depth: 30 feet.

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring noted that the applicant's property was previously zoned I-2 – General Industrial. As such, the residential use of the property was nonconforming in nature, in that residential use was neither a Permitted nor Special Use within the I-2 – General Industrial zoning district. Tipp City Code specifically prohibits expansion of a nonconforming use. Code §154.136(D)(1) states:

No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter.

Therefore, the applicants were precluded from proceeding with seeking a variance for the proposed expansion of their residential structure under the I-2 zoning designation.

Accordingly, the applicant filed for rezoning of the property from I-2 – General Industrial to R-2 – Urban Residential. On December 17, 2007 City Council passed Ordinance 46-07, which rezoned the property from I-2 – General Industrial to R-2 – Urban Residential. On January 16, 2008 the Ordinance became effective, thus rezoning the property in question to residential and making possible the application before the Board.

Mr. Spring noted that the rezoning of the property was not a mandate for approval of the requested variance, but simply allowed the Board to consider the request as any other variance request before the Board.

Vice Chairperson Wall called upon the representative for this case. Mr. Spring noted that Mr. Powell did not take the oath when originally administered.

Mrs. Patterson, notary, swore in Mr. Powell whom wished to speak.

J. R. Powell, 9620 Milton Plow Road, whom represented Cindy and Paul Adkins at 31 Wilhelm Street, Tipp City. Mr. Powell noted that the residential house had been zoned as an I-2 property and found it beneficial to have the property rezoned to residential. Mr. Powell stated that the reason for the addition was to add a bedroom with a bath. Currently the situation with the layout of the home was difficult for Mr. Adkins due to a handicap. Mr. Powell expressed that the addition would not protrude further into the setbacks than the original structure.

Vice Chairperson Wall asked if it was possible to add to the side of the structure rather than going towards the street. Mr. Powell noted that the reasoning for adding to the front of the home was for the bedroom to actually be large enough to incorporate the bathroom with the bedroom for Mr. Adkins.

Board Members found that no edits were made to the drawings and the variance request took into account for the overhangs.

Vice Chairperson Wall asked if there were any neighbor comments. Mrs. Patterson said there were none.

Vice Chairperson Wall asked for further discussion.

Variance 1

Mr. Borchers **moved to grant a variance of 19' to the required front yard setback of 30' noted in Code §154.044(C)(2)(a) in conjunction with the construction of an addition to the primary structure located at the single-family residence at 31 Wilhelm Street**, seconded by Mr. Berrett. **Motion carried.** Ayes: Borchers, Berrett, and Wall. Nays: None.

Variance 2

Mr. Borchers **moved to grant a variance of 27' to the required rear yard setback of 30' noted in Code §154.044(C)(2)(b) in conjunction with the construction of an addition to the primary structure located at the single-family residence at 31 Wilhelm Street**, seconded by Mr. Berrett. **Motion carried.** Ayes: Borchers, Berrett, and Wall. Nays: None.

Case No. 03-08: Daniel Muthard, owner - 1116 Manchester Drive, Tipp City, OH - Inlot:

**Daniel Muthard
1116 Manchester
Setback
Variance
Request**

Inlot 3347 – The applicant requests a variance 3' 3" to the required rear yard setback of 35' noted in Code §154.043(C)(2)(a).

Present Zoning District: R-1C – Urban Residential Zoning District

Zoning Code Section(s): §154.043(C)(2)(b)

Mr. Spring stated that the applicant requested a variance of 3' 3" to the required rear yard setback of 35' noted in Code §154.043(C)(2)(b) in conjunction with the construction of an addition to the primary structure located at the single-family residence at 1116 Manchester Drive. If approved, the addition would be 31' 9" from the rear property line.

Code §154.043(C)(2)(b) indicates:

Minimum rear yard depth: 35 feet.

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Staff noted that the property contained a 10' utility easement at the rear (southern) property line and a 5' utility easement on the side (east) property line. The proposed addition would not encroach into either of these easements.

There was an existing 8' x 12' detached accessory structure (shed) in the rear yard. The proposed addition would be ± 18' from the proposed shed in accordance with Code §154.059(D)(4) which required that all detached accessory structures maintain a minimum 10' setback from any dwelling on the same lot.

Mr. Spring noted that there was an existing ± 12' x 16' deck at the rear of the home which would be removed in the process of constructing the proposed addition.

Vice Chairperson Wall called upon Mr. Muthard.

Mr. Daniel Muthard, 1116 Manchester Drive, stated that he was present due to his lot being irregularly shaped, lot being 112' deep on the west side and a 132' deep on the east side. Mr. Muthard said that with the addition the encroachment was only 3' 3" on the west side and 6" on the east side and if his lot was rectangular he wouldn't be there. Mr. Muthard stated that the deck was to be removed and the addition to be placed 4' out from where the existing deck was. This was a sunroom type of addition and the deck would not be replaced. Mr. Muthard submitted an updated drawing that was of scale of the addition to the Board.

Vice Chairperson Wall asked if there were any neighbor comments. Mrs. Patterson said there were none.

Vice Chairperson Wall asked for further discussion. There being none, Mr. Berrett **moved to grant a variance of 3' 3" to the required rear yard setback of 35' noted in Code §154.043(C)(2)(b) in conjunction with the construction of an addition to the primary structure located at the single-family residence at 1116 Manchester Drive**, seconded by Mr. Borchers. **Motion carried.** Ayes: Berrett, Borchers, and Wall. Nays: None.

Old Business

There was none.

Miscellaneous

Vice Chairperson Wall stated that as of today one of their Board Members resigned, so if anyone knew of someone who might be interested in serving to please have them submit an application.

Vice Chairperson Wall inquired if the new appointed person would assume the term of Mr. Naas which would expire in December of 2008. Mr. Spring stated that was correct.

Adjournment

There being no further business, Mr. Borchers **moved to adjourn the meeting**, seconded by Mr. Berrett and unanimously approved. **Motion carried.** Vice Chairperson Wall declared the meeting adjourned at 8:12 p.m.

Chairman Pro-Tem

Attest: _____
Mrs. Kimberly Patterson, Board Secretary